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of 14

CANCELLED

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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (CG)

WRIT PETITION NO. 1397 /2004

PETITIONER

Govind Das, aged about 38 years, son of Shri Kalipad Das, R/o. village - Bhetharbhat Colony, Tah. Dharamjaigarh, District - Raigarh (Chhattisgarh)

P. R. No. 1397/2004
Presented by Shri A. N. B. Phule
dated 13.05.04

VERSUS

RESPONDENTS

P1. State of Chhattisgarh,
Thru: Collector, Raigarh

P2. The Principal, District Training Centre (Diet), Dharamjaigarh, Tah and District Raigarh (C.G.)

P3. Kumar Vijay Singh, aged about 58 years, S/o. Late Chandrachurn Prasad Singh Judev, resident of Dharamjaigarh, District - Raigarh (Chhattisgarh)

RECEIVED-COPY
13/5/04
Clerk to A. G. Bilaspur

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. No. 1397/ सन् 2004

आदेश पत्रक (पूर्वानुबन्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	19.1.2005 On a mention being made, the matter is taken up for hearing. Shri A.N. Bhakta, counsel for the petitioner. Shri Sanjay S. Agrawal, Government Advocate for the State/ respondent No.1. None appears on behalf of respondent No.2. Shri M.D. Sharma, counsel for respondent No.3. As agreed upon by learned counsel for the parties, the matter is heard for final disposal. The petitioner has preferred this writ petition under Article 227 of the Constitution of India, being aggrieved by the order dated 7.4.2004 passed by the Civil Judge, Class-I, Dharamjaigarh, whereby the petitioner's application under Order 6 Rule 17 of the Code of the Civil Procedure has been rejected. Learned counsel for the petitioner submits that the petitioner's father purchased the land in question from respondent No.3 on 16.6.1995 on a consideration of Rs.45,000/-. After that, the petitioner moved for entry of his name in the Nazul record, but his prayer was rejected on 7.1.1997 on the ground that the land in question was already sold by the father of respondent No.3 to the Government of Madhya Pradesh. Being aggrieved by that, the petitioner filed a suit in the Court of Civil Judge, Class-I, Dharamjaigarh, for setting aside the order of the Sub Divisional Officer dated 7.1.1997, and also in para 10 of the plaint pleaded that in case his name is not recorded in the revenue record, then he is entitled for the consideration amount of	

(32)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. No. 1397/ सन् 2004

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Rs.45,000/- along with simple interest from respondent No.3. Learned counsel for the petitioner further submitted that the plea has already been taken in the plaint; now he wants to amend the relief clause that the petitioner wants to add para 14 (1) (a) that in case the name of plaintiff is not registered in the revenue record then a decree be passed against respondent No.3 for Rs.45,000/- plus interest. Learned counsel for the petitioner also submits that since the pleading was already in para No.10 of the plaint and amendment was sought in relief clause only, therefore, the trial Court ought not to have rejected his plea. He further submits that if that amendment is allowed, the petitioner will readily pay the court fees as chargeable on the relief asked for. On the other hand, learned counsel for respondent No.3 objected the amendment on the ground that in the first instance, the petitioner has not mentioned in the application for amendment that how much court fees will be paid and whether he is ready to pay the same or not. Since the suit is simplicitor for declaration, therefore, the amendment sought for cannot be allowed. Having heard learned counsel for the parties, I have perused the record. Perusal of para 10 of the plaint shows that in the alternative, if the land in question was not recorded in the Nazul Department in the name of the petitioner, then he is entitled to get the consideration amount of Rs.45,000/- along with simple interest. Therefore, the alternative plea was already there, and the only question was that in the amendment application the petitioner has not asked that how much	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 3 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	court fees is payable and he is ready to pay. At the outset, learned counsel for the petitioner submits that he will readily pay the court fees. Therefore, looking to the above facts, since the petitioner was asking for amendment in the relief clause only, the learned trial Court ought to have allowed the same in order to finally adjudicate the dispute between the parties and for just decision of the case. In the circumstances, this writ petition deserves to be allowed and the impugned order deserves to be quashed. Learned counsel for respondent No.3 further submits that if the amendment is allowed then the defendant may be allowed to raise all the legal points against the relief sought by the petitioner, as available to him under the law. The prayer seems to be just and fair. Therefore, the petition is allowed and the impugned order is quashed. The trial Court is directed to allow the petitioner to amend the pleadings with the court fees clause also and that too on payment of the court fees the amendment be allowed. Respondent No.3 herein shall be entitled to raise all the legal pleas available to him under the law in his written statement. In view of this order, M.(W.)P.No.1248/2004 stands disposed of. Parties are entitled for certified copy of this order.	
Soma		Sd/- L.C.BHADOO Judge